

TRULINCS 54652509 - PARVIZ, MAHSA - Unit: SET-D-A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JASMIN JETTA TAPIA,
Petitioner,

v.

HOWARD BARRON,
Respondent.

Cause No. 2:23-cv-01531-BJR-BAT

PETITIONER'S REPLY TO RESPONDENTS' REQUESTS (Dkt. 6, 9);
PETITIONER'S OBJECTIONS TO THE R&R (Dkt. 12);
EX PARTE MOTION FOR APPOINTMENT OF COUNSEL



MAR 04 2024

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

COMES NOW, Petitioner JASMIN JETTA TAPIA and files PETITIONER'S REPLY TO RESPONDENTS' REQUESTS (Dkt. 6, 9); PETITIONER'S OBJECTIONS TO THE R&R (Dkt. 12); and moves this honorable Court, on an ex parte basis, for appointment of counsel pursuant to 18 U.S.C. Sec. 3006A and this Court's inherent authority.

I. BACKGROUND

1.1 On October 12, 2023, Petitioner filed the instant action under 28 U.S.C. Sec. 2241 seeking his FSA credits from the BOP (Dkt. 3). An Order Directing Service, Return & Brief issued by the Hon. Brian A. Tsuchida on the same day (Dkt. 4) and AUSA Lyndsie Rebecca Schmalz entered an appearance on behalf of Respondents on October 19, 2023 (Dkt. 5).

1.2 On November 13, 2023, Respondents filed their Response (Dkt. 6), which Petitioner was not able to personally review as the BOP packaged his property in preparation for a flight. Petitioner was redesignated to a different institution within 24 hours of receiving the Response in the mail and accordingly, filed a Motion to Extend Time (Dkt. 8).

1.3 Since then, Petitioner has encountered significant difficulties communicating with the Court, BOP staff and individuals who had been assisting him with obtaining his FSA credits from the BOP.

1.4 Petitioner respectfully requests, on an ex parte basis, that a Public Defender or CJA panel attorney be appointed to represent him pursuant to 18 U.S.C. Sec. 3006A. Petitioner has not had an opportunity to personally review subsequent filings in this action and has only seen the docket. Petitioner is being assisted in the preparation of this pleading and files the reply herein to comply with the Court's Order of February 7, 2024 (Dkt. 14).

II. THIS COURT SHOULD GRANT PETITIONER'S HABEAS RELIEF ON THE MERITS

2.1 On information and belief, Respondents represent to the Court that Petitioner should not receive FSA credits for failing to exhaust administrative remedies and/or lack of entitlement on the merits and/or for want of jurisdiction due to the BOP's transfer of Petitioner from Washington to Florida after Petitioner filed the instant action. Petitioner objects to Respondents' Responses (Dkt. 6, 9) in their entirety.

2.2 Petitioner respectfully requests appointment of Counsel to more thoroughly reply to Respondents' Responses (Dkt. 6, 9).

III. THIS COURT HAS SUBJECT MATTER JURISDICTION AND A TRANSFER WOULD HINDER RELIEF ON THE MERITS

3.1 This Court should assign counsel to represent Petitioner in this matter, and after more thorough briefing, should grant Petitioner's requested relief on the merits of his petition. All the events leading up to the filing of this action occurred within the jurisdiction of this Court. Just because Respondents unexpectedly transferred Petitioner to another facility does not mean this Court lacks jurisdiction to grant Petitioner relief on the merits.

3.2 Alternatively, if this Court believes this action must be transferred to another jurisdiction, Petitioner respectfully requests that he be represented by counsel licensed to practice in the State of Florida at all stages of subsequent proceedings.

IV. PETITIONER'S OBJECTIONS TO THE COURT'S REPORT AND RECOMMENDATION (Dkt. 12)

TRULINCS 54652509 - PARVIZ, MAHSA - Unit: SET-D-A

4.1 The Magistrate's Report and Recommendation concludes "Petitioner's request for habeas relief is not ripe" (Dkt. 12) and, on information and belief, the conclusion is based upon Respondents' representations to the Court that Petitioner has not exhausted his administrative remedies as a requisite to petitioning the Court for relief. Petitioner has exhausted his administrative remedies and has not received a response to his BP-11 submitted prior to filing the instant action. Petitioner has attempted to exhaust his administrative remedies and any record of such would be maintained by individuals at FDC SeaTac, the Western Regional Office BOP and Central Office of General Counsel BOP such that this Court must retain jurisdiction over this action.

4.2 Petitioner is entitled to FSA credits on the exact same grounds as a previous case in this Court (see *Espinoza v. Barron*, No. 2:23-CV-00967-JHC-TLF). The BOP has refused to acknowledge that Petitioner is FSA eligible and has withheld FSA credits and program opportunities such that the manner in which Petitioner's sentence is being executed is unconstitutional.

V. PRAYER

5.1 Wherefore, premises considered, Petitioner respectfully requests that his ex parte motion for appointment of counsel be granted, that he be granted his FSA credits, and that he receive any further relief to which he may be entitled.

DATE: February 28, 2024

Respectfully submitted,


_____/s/ Jasmin Jetta Tapia
JASMIN JETTA TAPIA

(by permission)

TRULINCS 54652509 - PARVIZ, MAHSA - Unit: SET-D-A

-----Parvis, Shamsi on 2/16/2024 10:51 PM wrote:

10/04/2023	2	Notice of Filing Deficiency re 1 Proposed Document(s). ***Action Required***
------------	---	--

2241/2254 Filing Fee Not Paid, Prison Trust Account Statement.

See attached letter for more information and instructions. Filer has until 11/3/2023 to correct IFP application (cc: Letter and IFP form to petitioner via USPS) (CR) (Entered: 10/04/2023)

10/12/2023 Deficiency corrected. Filing fee received. (CR) (Entered: 10/12/2023)

10/12/2023 FILING FEE RECEIVED: \$ 5.00, receipt number 200003188 (CR) (Entered: 10/12/2023)

10/12/2023 3 2241 PETITION for Writ of Habeas Corpus filed by Jasmin Jetta Tapia. (Attachments: # 1 Civil Cover Sheet) (CR) (Entered: 10/12/2023)

10/12/2023 4 ORDER DIRECTING SERVICE OF 3 2241 PETITION, RETURN AND BRIEFING by Hon. Brian A Tsuchida. Documents served electronically to U.S. Attorney for the Western District of Washington on 10/12/2023. (CR) (cc: Petitioner via USPS) (Entered: 10/12/2023)

10/19/2023 5 NOTICE of Appearance by attorney Lyndsie Rebecca Schmalz on behalf of Respondents Howard C Barron, Colette S Peters. (Schmalz, Lyndsie) (Entered: 10/19/2023)

11/13/2023 6 RESPONSE to 3 Petition for Writ of Habeas Corpus by Respondents Howard C Barron, Colette S Peters. Noting Date 1/12/2024 12/1/2023 11/24/2023, (Schmalz, Lyndsie) Modified noting date on 11/27/2023 (SB). Modified noting date on 12/4/2023 (SB). (Entered: 11/13/2023)

11/13/2023 7 DECLARATION of Danielle Rogowski filed by Respondents Howard C Barron, Colette S Peters re 6
RESPONSE to 3 Petition for Writ of Habeas Corpus by Respondents Howard C Barron, Colette S Peters. (Attachments: # 1
Exhibit 1, # 2 Exhibit 2)(Schmalz, Lyndsie) (Entered: 11/13/2023)

11/21/2023 8 MOTION for Extension of Time to File Responsive Pleadings, filed by Petitioner Jasmin Jetta Tapia.
(SB) (Entered: 11/22/2023)

11/27/2023 Noting Date Set/Reset re 6 RESPONSE to 3 Petition for Writ of Habeas Corpus, Petitioner's 8
MOTION for Extension of Time. Dkt. no. 6 noted by clerk for 12/8/2023, dkt. no. 8 noted by clerk for 12/1/2023. (SB) (Entered:
11/27/2023)

12/01/2023 9 RESPONSE, by Respondents Howard C Barron, Colette S Peters, to 8 MOTION for Extension of Time.
(Schmalz, Lyndsie) (Entered: 12/01/2023)

12/04/2023 10 ORDER granting Petitioner's 8 Motion for Extension to Respond and Renoting the Matter. Any response Petitioner wished to file shall be filed no later than 1/5/2024. Any reply the United States wishes to file shall be filed no later than 1/10/2024. The clerk shall note the § 2241 habeas petition and the United States' Response, Dkt. 6 , and the United States' request for dismissal or transfer, Dkt. 9 , for 1/12/2024. The Court directs Respondent, the United States, to provide the

TRULINCS 54652509 - PARVIZ, MAHSA - Unit: SET-D-A

clerk of court with an updated mailing address for Petitioner. Signed by Hon. Brian A Tsuchida. (SB) (cc: Petitioner via USPS) (Entered: 12/04/2023)

01/10/2024 11 REPLY by Respondents Howard C Barron, Colette S Peters to 10 Order on Motion for Extension of Time,,, Set Motion and R&R Deadlines/Hearings,,, Util - Set/Reset Motion Noting Date,, (Schmalz, Lyndsie) (Entered: 01/10/2024)

01/12/2024 12 REPORT AND RECOMMENDATION re 3 Petition for Writ of Habeas Corpus. The Court concludes Petitioner's request for habeas relief is not ripe, and the petition should therefore be DENIED and DISMISSED without prejudice. Objections to R&R due by 1/30/2024. The matter will be ready for the Court's consideration 14 days from the date the objection is filed and served. Signed by Hon. Brian A Tsuchida. (Attachments: # 1 Proposed Order, # 2 Proposed Judgment) (SB) (cc: Petitioner via USPS) Modified on 2/7/2024 to re-note for 3/1/2024 per 14 Order entered 2/7/2024(SB). (Entered: 01/12/2024)

01/16/2024 13 MOTION for Extension of Time, filed by Petitioner Jasmin Jetta Tapia. (SB) (Entered: 01/18/2024)

02/07/2024 14 ORDER granting Plaintiff's 13 Motion for Extension of Time. On or before 2/28/2024, Petitioner is directed to file: (a) any response to the United States' Response that her § 2241 habeas petition be denied on the merits (Dkt. 6), (b) any response to the United States' subsequent request that the Court either dismiss the matter for lack of jurisdiction or transfer the matter to the federal jurisdiction in which Petitioner is currently detained (Dkt. 9), and (c) any objection to the Court's Report and Recommendation (Dkt. 12). The Clerk is directed to re-note the Report and Recommendation (Dkt. 12) to 3/1/2024. Signed by Hon. Brian A Tsuchida. (SB) (cc: Plaintiff via USPS) (Entered: 02/07/2024)

FROM: 54652509
TO: Parvis, Shamsi
SUBJECT: RE: Re: Jetta
DATE: 02/28/2024 01:21:33 PM

FEDERAL DETENTION CENTER
NAME: Mahsa Pournazeri
REG: 54650509 UNIT: 2A
P.O. BOX 13900
SEATTLE, WA. 98198-1090

FILED
LOGGED
RECEIVED
MAR 04 2024
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE WA 980
29 FEB 2024 PM 2 L

BY DEPUTY

US District Court
Attor: Clerk (please file in 2:23-01531-BJR-BAT)
700 Stewart St.
Seattle, WA 98101-44237081